

HOUSE BILL NO. 65

INTRODUCED BY D. VILLA

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

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5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING WORKERS' COMPENSATION LAW;  
6 ~~DESIGNATING THE DEPARTMENT OF LABOR AND INDUSTRY AS A CRIMINAL JUSTICE AGENCY WITH~~  
7 ~~RESPECT TO VIOLATIONS OF THE WORKERS' COMPENSATION ACT; CLARIFYING THE POWER OF THE~~  
8 ~~DEPARTMENT TO ENTER ONTO CONSTRUCTION SITES FOR THE PURPOSE OF ENFORCING WORKERS'~~  
9 ~~COMPENSATION LAWS; PROVIDING THE DEPARTMENT WITH AUTHORITY TO NOTIFY INSURERS~~  
10 ~~UNDER CERTAIN CONDITIONS OF THE STATUS OF AN EMPLOYEE AS A PERSON WITH A DISABILITY~~  
11 ~~FOR SUBSEQUENT INJURY FUND PURPOSES; PROHIBITING INSURERS FROM INCLUDING CERTAIN~~  
12 REIMBURSED COSTS AS PART OF THE CALCULATION OF AN EMPLOYER'S EXPERIENCE  
13 MODIFICATION FACTOR; PROVIDING THAT CERTAIN INFORMATION REGARDING SUBSEQUENT INJURY  
14 CERTIFICATION IS PART OF THE WORKERS' COMPENSATION DATABASE SYSTEM AND MAY BE  
15 RELEASED UNDER SPECIFIED CONDITIONS TO AN INSURER; LIMITING LIABILITY OF INJURED  
16 EMPLOYEES TO THIRD-PARTY PROVIDERS AND PROVIDING FOR ACTIONS BY THIRD-PARTY  
17 PROVIDERS AGAINST UNINSURED EMPLOYERS FOR SERVICES TO AN EMPLOYEE THAT ARE NOT  
18 REIMBURSED BY THE UNINSURED EMPLOYERS' FUND; PROVIDING THAT THE UNINSURED  
19 EMPLOYERS' FUND MAY NOT PAY MEDICAL BENEFITS CLAIMS IN EXCESS OF \$100,000 FOR EACH  
20 CLAIM; INCREASING THE MONETARY THRESHOLD FOR DEFERRAL OF THE SUBSEQUENT INJURY  
21 FUND ASSESSMENT; AMENDING SECTIONS ~~39-71-203~~, 39-71-225, 39-71-503, 39-71-508, 39-71-510,  
22 39-71-907, AND 39-71-915, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
25

26 **NEW SECTION. Section 1. Inspection of construction sites -- public policy -- penalty.** (1) In  
27 recognition of the benefit of fair competition among business competitors and the public policy of this state  
28 providing for enforcement of workers' compensation insurance coverage requirements, the legislature finds that  
29 it is reasonable to allow access by authorized employees of the department onto construction sites for the  
30 purpose of determining whether workers are appropriately covered by workers' compensation insurance or a valid

1 exemption from insurance coverage.

2 (2) In order to determine if proper workers' compensation insurance coverage is in place or if a valid  
3 exemption is held by a worker present on a construction site, authorized employees of the department may enter  
4 onto any construction site for which a construction permit is required or has been issued.

5 (3) Upon presentation of proper credentials, department employees must be admitted to a construction  
6 site to:

7 (a) gather information relating to compliance with the coverage requirements of this chapter; and

8 (b) when appropriate, issue a notice of violation to a person who is in violation of 39-71-419.

9 (4) This section does not authorize the department's employees to engage in a breach of the peace.

10 The department may request the assistance of appropriate local law enforcement agencies to peaceably enter  
11 a construction site.

12 (5) A person who purposely or knowingly restricts the access to a construction site by a credentialed  
13 department employee or who obstructs the employee in the performance of the employee's duties under this  
14 section commits the offense of obstruction of a public servant as provided in 45-7-302.

15 (6) As used in this section, the following definitions apply:

16 (a) "Construction permit" means any permit that can be issued pursuant to Title 50, chapter 60, and  
17 includes:

18 (i) a boiler permit;

19 (ii) a building permit;

20 (iii) an electrical permit;

21 (iv) an elevator permit;

22 (v) a mechanical permit; or

23 (vi) a plumbing permit.

24 (b) "Construction site" means any parcel of real property where work is being performed for which a  
25 construction permit is required or has been issued.

26

27 ~~NEW SECTION. Section 2. Person with disability -- notification to insurer of employee's~~  
28 ~~certification -- limitation. (1) If an insurer submits to the department the name of a current employee of an~~  
29 ~~employer covered by that insurer for workers' compensation purposes, the department shall, except as provided~~  
30 ~~in subsection (2), identify whether that current employee has been certified by the department as a person with~~

1 a disability.

2 ~~————(2) The fact that an employee has been certified by the department as a person with a disability may not~~  
 3 ~~be disclosed by the department to an insurer unless the employee has expressly consented in writing to the~~  
 4 ~~department's disclosure of that information to the insurer of an employer that is currently employing the employee.~~  
 5 ~~The consent may be withdrawn upon written notification to the department.~~

6 ~~————(3) The grant or withholding of the employee's consent may not affect the department's decision of~~  
 7 ~~whether to certify the employee as a person with a disability.~~

8

9 NEW SECTION. Section 2. Reimbursement of subsequent injury fund -- effect on claims  
 10 **experience rating.** An insurer that uses an employer's claims costs experience as a factor that influences the  
 11 amount of premium charged to that particular employer by using an experience modification factor or similar  
 12 rating technique may not base that factor on those claims costs that are reimbursed by the subsequent injury  
 13 fund.

14

15 ~~————Section 4. Section 39-71-203, MCA, is amended to read:~~

16 ~~————"39-71-203. Powers of department -- rules -- designation as criminal justice agency. (1) The~~  
 17 ~~department is hereby vested with has full power, authority, and jurisdiction to do and perform any and all things~~  
 18 ~~that are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under~~  
 19 ~~this chapter.~~

20 ~~————(2) The department may adopt rules to carry out the provisions of this chapter.~~

21 ~~————(3) The department is designated as a criminal justice agency, as defined in 44-5-103, for the purpose~~  
 22 ~~of obtaining confidential criminal justice information regarding persons who are or are believed to be committing~~  
 23 ~~acts in violation of this chapter, including but not limited to:~~

24 ~~————(a) the improper avoidance of the coverage requirements provided for in 39-71-401; or~~

25 ~~————(b) the improper application for or use of the independent contractor exemption certification provided for~~  
 26 ~~in 39-71-417."~~

27

28 SECTION 3. SECTION 39-71-225, MCA, IS AMENDED TO READ:

29 **"39-71-225. Workers' compensation database system.** (1) The department shall develop a workers'  
 30 compensation database system to generate management information about Montana's workers' compensation

1 system. The database system must be used to collect and compile information from insurers, employers, medical  
2 providers, claimants, claims examiners, rehabilitation providers, and the legal profession.

3 (2) Data collected must be used to provide:

4 (a) management information to the legislative and executive branches for the purpose of making policy  
5 and management decisions, including but not limited to:

6 (i) performance information to enable the state to enact remedial efforts to ensure quality, control abuse,  
7 and enhance cost control;

8 (ii) information on medical, indemnity, and rehabilitation costs, utilization, and trends;

9 (iii) information on litigation and attorney involvement for the purpose of identifying trends, problem areas,  
10 and the costs of legal involvement;

11 (b) current and prior claim information to any insurer that is at risk on a claim, or that is alleged to be at  
12 risk in any administrative or judicial proceeding, to determine claims liability or for fraud investigation. The  
13 department may release information only upon written request by the insurer and may disclose only the claimant's  
14 name, claimant's identification number, prior claim number, date of injury, body part involved, and name and  
15 address of the insurer and claims examiner on each claim filed. Information obtained by an insurer pursuant to  
16 this section must remain confidential and may not be disclosed to a third party except to the extent necessary for  
17 determining claim liability or for fraud investigation; ~~and~~.

18 (c) current and prior claim information to law enforcement agencies for purposes of fraud investigation  
19 or prosecution; and

20 (d) to any insurer that is at risk on a claim, information identifying whether the claimant has been certified  
21 by the department as a person with a disability. Information obtained by an insurer pursuant to this subsection  
22 (2)(d) must remain confidential and may not be disclosed to a third party except as necessary to implement the  
23 provisions of Title 39, chapter 71, part 9. An insurer may disclose to the employer that the claimant has been  
24 certified by the department and of the potential for a limit on the insurer's liability and of potential reimbursement  
25 by the subsequent injury fund.

26 (3) The department is authorized to collect from insurers, employers, medical providers, the legal  
27 profession, and others the information necessary to generate the workers' compensation database system.

28 (4) The workers' compensation database system must be designed in accordance with the following  
29 principles:

30 (a) avoidance of duplication and inconsistency;

- 1 (b) reasonable availability of data elements;
- 2 (c) value of information collected to be commensurate with the cost of retrieving the collected information;
- 3 (d) uniformity to permit efficiency of collection and to allow interstate comparisons;
- 4 (e) a workable mechanism to ensure the accuracy of the data collected and to protect the confidentiality
- 5 of collected data;
- 6 (f) reasonable availability of the data at a fair cost to the user;
- 7 (g) a broad application to plan No. 1, plan No. 2, and plan No. 3 insurers;
- 8 (h) compatibility with electronic data reporting;
- 9 (i) reporting procedures that can be handled through private data collection systems that adhere to the
- 10 provisions of subsections (4)(a) through (4)(h);
- 11 (j) implementation of reporting requirements that allow reasonable lead time for compliance.
- 12 (5) The department shall publish an annual report on the information compiled.
- 13 (6) Users of information obtained from the workers' compensation database under this section are liable
- 14 for damages arising from misuse or unlawful dissemination of database information.
- 15 (7) An insurer or a third-party administrator who submitted 50 or more "first reports of injury" to the
- 16 department in the preceding calendar year shall electronically submit the reports and any other reports related
- 17 to the reported claims in a nationally recognized format specified by department rule.
- 18 (8) The department may adopt rules to implement this section."

19

20 **Section 4.** Section 39-71-503, MCA, is amended to read:

21 **"39-71-503. Uninsured employers' fund -- purpose and administration of fund -- maintaining**

22 **balance for administrative costs -- appropriation.** (1) There is created an uninsured employers' fund in the

23 state special revenue account to pay:

24 (a) to an injured employee of an uninsured employer the same benefits the employee would have

25 received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3, except as provided

26 in subsection (3);

27 (b) the costs of investigating and prosecuting workers' compensation fraud under 2-15-2015; and

28 (c) the expenses incurred by the department in administering the uninsured employers' fund.

29 (2) The department may refer to the workers' compensation fraud office, established in 2-15-2015, cases

30 involving:

1 (a) false or fraudulent claims for benefits; and

2 (b) criminal violations of 45-7-501.

3 (3) (a) Except as provided in subsection (3)(b), surpluses and reserves may not be kept for the fund. The  
4 department shall make payments that it considers appropriate as funds become available from time to time. The  
5 payment of weekly disability benefits takes precedence over the payment of medical benefits. Lump-sum  
6 payments of future projected benefits, including impairment awards, may not be made from the fund. The board  
7 of investments shall invest the money of the fund, and the investment income must be deposited in the fund.

8 (b) The department shall maintain at least a 3-month balance based on projected budget costs for  
9 administration of the fund. The balance for administrative costs may be used by the department only in  
10 administering the fund.

11 (c) The maximum aggregate medical benefits expenditure that may be made from the fund may not  
12 exceed \$100,000 for any single claim regardless of whether the claim arises from an injury or an occupational  
13 disease.

14 (4) The amounts necessary for ~~the administration of the fund and for~~ the payment of benefits from the  
15 fund are statutorily appropriated, as provided in 17-7-502, from the fund."  
16

17 **SECTION 5. SECTION 39-71-508, MCA, IS AMENDED TO READ:**

18 **"39-71-508. Coordination of remedies -- limitation of liability of employee to third-party providers**  
19 **-- rights of third-party providers. (1) An employee who suffers an injury arising out of and in the course of**  
20 **employment while working for an uninsured employer, as defined in 39-71-501, or an employee's beneficiaries**  
21 **in injuries resulting in death may pursue all remedies concurrently, including but not limited to:**

22 ~~(1)~~(a) a claim for benefits from the uninsured employers' fund;

23 ~~(2)~~(b) a damage action against the employer in accordance with 39-71-509;

24 ~~(3)~~(c) an independent action against an employer as provided in 39-71-515; or

25 ~~(4)~~(d) any other civil remedy provided by law.

26 (2) An employee who is entitled to recover under this part is not liable to any third-party provider for  
27 services provided to the employee that are not reimbursed by the uninsured employers' fund.

28 (3) A third-party provider that is not fully reimbursed by the uninsured employers' fund for services  
29 provided to an injured employee may bring an action directly against the uninsured employer for the amount of  
30 services that were not paid by the uninsured employers' fund."

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2           **Section 6.** Section 39-71-510, MCA, is amended to read:

3           **"39-71-510. Limitation on benefit entitlement under fund.** (1) Notwithstanding the provisions of  
4 39-71-407, ~~and~~ 39-71-503, and subsection (2) of this section, injured employees or an employee's beneficiaries  
5 who pursue a claim for benefits from the uninsured employers' fund are not granted an entitlement by this state  
6 for full workers' compensation benefits from the fund. Benefits from the fund must be paid in accordance with the  
7 ~~sums~~ money in the fund. If the department determines at any time that the ~~sums~~ money in the fund ~~are~~ is not  
8 adequate to fully pay all claims, the department may make appropriate proportionate reductions in benefits to all  
9 claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

10           (2) The maximum medical benefits entitlement for any single claim against the fund is limited to an  
11 aggregate amount of \$100,000."

12

13           **Section 7.** Section 39-71-907, MCA, is amended to read:

14           **"39-71-907. Certified person with a disability to be compensated for injury as provided by chapter**  
15 **-- insurer liability for compensation limited.** (1) A person certified as having a physical or mental disability that  
16 constitutes or results in a substantial impediment to employment who receives an injury, as defined in 39-71-119,  
17 that results in death or disability must be paid compensation in the manner and to the extent provided in this  
18 chapter or, in case of death resulting from the injury, the compensation must be paid to the person's beneficiaries  
19 or dependents. The liability of the insurer for payment of medical and burial benefits as provided in this chapter  
20 is limited to those benefits arising from services rendered during the period of 104 weeks after the date of injury.  
21 The liability of the insurer for payment of benefits as provided in this chapter is limited to 104 weeks of  
22 compensation benefits actually paid. Thereafter, all compensation and the cost of all medical care and burial are  
23 the liability of the fund.

24           (2) The liability of the fund for reimbursement under this section is limited to the amount currently in the  
25 fund at the time the reimbursement request is received by the fund and the amount collectable in the next  
26 assessment period pursuant to 39-71-915."

27

28           **Section 8.** Section 39-71-915, MCA, is amended to read:

29           **"39-71-915. Assessment of insurer -- employers -- definition -- collection.** (1) As used in this section,  
30 "paid losses" means the following benefits paid during the preceding calendar year for injuries covered by the

1 Workers' Compensation Act without regard to the application of any deductible, regardless of whether the  
2 employer or the insurer pays the losses:

3 (a) total compensation benefits paid; and

4 (b) except for medical benefits in excess of \$200,000 for each occurrence that are exempt from  
5 assessment, total medical benefits paid for medical treatment rendered to an injured worker, including hospital  
6 treatment and prescription drugs.

7 (2) The fund must be maintained by assessing each plan No. 1 employer, each employer insured by a  
8 plan No. 2 insurer, plan No. 3, the state fund, with respect to claims arising before July 1, 1990, and each  
9 employer insured by plan No. 3, the state fund. The assessment amount is the total amount paid by the fund in  
10 the preceding fiscal year and the expenses of administration less other realized income that is deposited in the  
11 fund. The total assessment amount to be collected must be allocated among plan No. 1 employers, plan No. 2  
12 employers, plan No. 3, the state fund, and plan No. 3 employers, based on a proportionate share of paid losses  
13 for the calendar year preceding the year in which the assessment is collected. The board of investments shall  
14 invest the money of the fund, and the investment income must be deposited in the fund.

15 (3) On or before May 31 each year, the department shall notify each plan No. 1 employer, plan No. 2  
16 insurer, and plan No. 3, the state fund, of the amount to be assessed for the ensuing fiscal year. The amount to  
17 be assessed against the state fund must separately identify the amount attributed to claims arising before July  
18 1, 1990, and the amount attributable to state fund claims arising on or after July 1, 1990. On or before April 30  
19 each year, the department, in consultation with the advisory organization designated under 33-16-1023, shall  
20 notify plan No. 2 insurers and plan No. 3 of the premium surcharge rate to be effective for policies written or  
21 renewed on and after July 1 in that year.

22 (4) The portion of the plan No. 1 assessment assessed against an individual plan No. 1 employer is a  
23 proportionate amount of total plan No. 1 paid losses during the preceding calendar year that is equal to the  
24 percentage that the total paid losses of the individual plan No. 1 employer bore to the total paid losses of all plan  
25 No. 1 employers during the preceding calendar year.

26 (5) The portion of the assessment attributable to state fund claims arising before July 1, 1990, is the  
27 proportionate amount that is equal to the percentage that total paid losses for those claims during the preceding  
28 calendar year bore to the total paid losses for all plans in the preceding calendar year. As required by 39-71-2352,  
29 the state fund may not pass along to insured employers the cost of the subsequent injury fund assessment that  
30 is attributable to claims arising before July 1, 1990.

1           (6) The remaining portion of the assessment must be paid by way of a surcharge on premiums paid by  
2 employers being insured by a plan No. 2 insurer or plan No. 3, the state fund, for policies written or renewed  
3 annually on or after July 1. The surcharge rate must be computed by dividing the remaining portion of the  
4 assessment by the total amount of premiums paid by employers insured under plan No. 2 or plan No. 3 in the  
5 previous calendar year. The numerator for the calculation must be adjusted as provided by subsection (9).

6           (7) Each plan No. 2 insurer providing workers' compensation insurance and plan No. 3, the state fund,  
7 shall collect from its policyholders the assessment premium surcharge provided for in subsection (6). When  
8 collected, the assessment premium surcharge may not constitute an element of loss for the purpose of  
9 establishing rates for workers' compensation insurance but, for the purpose of collection, must be treated as  
10 separate costs imposed upon insured employers. The total of this assessment premium surcharge must be stated  
11 as a separate cost on an insured employer's policy or on a separate document submitted by the insured employer  
12 and must be identified as "workers' compensation subsequent injury fund surcharge". Each assessment premium  
13 surcharge must be shown as a percentage of the total workers' compensation policyholder premium. This  
14 assessment premium surcharge must be collected at the same time and in the same manner that the premium  
15 for the coverage is collected. The assessment premium surcharge must be excluded from the definition of  
16 premiums for all purposes, including computation of insurance producers' commissions or premium taxes, except  
17 that an insurer may cancel a workers' compensation policy for nonpayment of the assessment premium  
18 surcharge. Cancellation must be in accordance with the procedures applicable to the nonpayment of premium.  
19 If an employer fails to remit to an insurer the total amount due for the premium and assessment premium  
20 surcharge, the amount received by the insurer must be applied to the assessment premium surcharge first and  
21 the remaining amount applied to the premium due.

22           (8) (a) All assessments paid to the department must be deposited in the fund.

23           (b) Each plan No. 1 employer shall pay its assessment by July 1.

24           (c) Each plan No. 2 insurer and plan No. 3, the state fund, shall remit to the department all assessment  
25 premium surcharges collected during a calendar quarter by not later than 20 days following the end of the quarter.

26           (d) The state fund shall pay the portion of the assessment attributable to claims arising before July 1,  
27 1990, by July 1.

28           (e) If a plan No. 1 employer, a plan No. 2 insurer, or plan No. 3, the state fund, fails to timely pay to the  
29 department the assessment or assessment premium surcharge under this section, the department may impose  
30 on the plan No. 1 employer, the plan No. 2 insurer, or plan No. 3, the state fund, an administrative fine of \$100

1 plus interest on the delinquent amount at the annual interest rate of 12%. Administrative fines and interest must  
2 be deposited in the fund.

3 (9) The amount of the assessment premium surcharge actually collected pursuant to subsection (7) must  
4 be compared each year to the amount assessed and upon which the premium surcharge was calculated. The  
5 amount undercollected or overcollected in any given year must be used as an adjustment to the numerator  
6 provided for by subsection (6) for the following year's assessment premium surcharge.

7 (10) If the total assessment is less than ~~\$200,000~~ \$500,000 for any year, the department may defer the  
8 assessment amount for that year and add that amount to the assessment amount for the subsequent year."

9  
10 NEW SECTION. Section 9. Codification instruction. ~~(4)~~ [Sections 1 and ~~3~~ 2] are intended to be  
11 codified as an integral part of Title 39, chapter 71, and the provisions of Title 39, chapter 71, apply to [sections  
12 1 and ~~3~~ 2].

13 ~~(2) [Section 2] is intended to be codified as an integral part of Title 39, chapter 71, part 9, and the~~  
14 ~~provisions of Title 39, chapter 71, part 9, apply to [section 2].~~

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16 NEW SECTION. Section 10. Effective date. [This act] is effective July 1, 2007.

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18 NEW SECTION. Section 11. Applicability. [Sections ~~5~~ 4 and 6] apply to injuries and occupational  
19 diseases occurring on or after July 1, 2007.

20

- END -